IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.532 OF 2004

Mr.A.V.Sakhare i/b Ms. Varsha Palav for the Petitioner.

Mr.P.N. Joshi for the Respondent.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 20TH APRIL,2005

P.C.:

Rule. Returnable forthwith. Heard finally by consent of parties.

1. Heard the learned Counsel for both sides. Perused the record. Fact remains that the award made in favour of the Respondent is an exparte award. Reasons that have been given by the Society for not appearing before Co.operative Court cannot be called convincing reasons, but in my opinion, firstly considering that the Petitioner is a

Co.operative Housing Society, secondly considering that according to the society all the flats are presently occupied and that for implementing the decree that has been passed in favour of the Respondent, somebody will have to be evicted. In my opinion, the Petitioner deserves to be given an opportunity of being heard on merits. But setting aside the award which is passed in favour of the Respondent would definitely cause prejudice to the interest of the Respondent. However, in my opinion, that prejudice is capable of being mitigated by setting terms. In my opinion, following order would meet the ends of justice.

O R D E R

(i) The decree passed by the trial court which is confirmed by the appellate court is set aside, subject to the condition that within a period of 12 weeks from today the Petitioner deposits in the Co.operative Court an amount of Rs.17,000/- with interest at the

rate of 18% p.a. from 15th August, 1978 till date, interest shall be simple interest and also pay to the Respondent an amount of Rs.10,000/- as costs of this petition.

(ii) In case the amount is deposited, the Co.operative Court shall invest that amount in any nationalised bank during the pendency of the dispute. Disposal of that amount shall be governed by the order that may be passed by the Co.operative Court in the dispute.

(iii) In case the amount as directed above is not deposited within the aforesaid period, then this petition shall be treated as dismissed without further reference to the Court

(iv) Considering that the dispute is pending for long time, the Co.operative Court is directed to hear and dispose of the dispute as expeditiously as possible. In any case within a period of 12 months from the date on which the parties

appear before the Co.operative Court.

(v) Parties have undertaken before me not to seek adjournment before the Co.operative Court.

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